

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

2014-5065

GENE H. YAMAGATA, et al.

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from United States Court of Federal Claims
Case Nos. 1:07-cv-00698 and 1:07-cv-00704 (consolidated)
Judge Nancy B. Firestone

**UNOPPOSED MOTION OF PLAINTIFFS-APPELLANTS
TO EXTEND TIME TO FILE APPEAL BRIEF**

Pursuant to Federal Circuit Rule 26(b), Plaintiffs-Appellants Gene H. Yamagata and Rex G. and Ruth G. Maughan move for an extension of time of ninety (90) days to file their appeal brief. The deadline for filing their appeal brief is currently set at June 2, 2014. The requested extension would set the due date to August 31, 2014. Given that August 31, 2014 is a Sunday, Appellants request that the deadline be set for Friday, August 29, 2014. Counsel for the Government has stated that it does not oppose the requested relief. No previous extensions have been granted to Appellants in this appeal.

In accordance with Federal Circuit Rule 26(b)(1), this motion is being filed more than seven (7) days before the deadline sought to be extended. In accordance with Federal Circuit Rule 26(b)(5), the motion is accompanied by declarations of counsel demonstrating good cause for the extension.

On April 14, 2014, Government's counsel, Arthur Catterall, contacted Appellants' counsel regarding the briefing schedule. On April 15, 2014, counsel for Rex G. and Ruth G. Maughan, Mr. Wilson, and counsel for Mr. Yamagata contacted Mr. Catterall regarding the present motion. On April 16, 2014, Mr. Catterall stated that the Government does not oppose Appellants' request for additional time. Indeed, an extension of time may also accommodate some scheduling concerns on Mr. Catterall's part.

This matter involves a consolidated appeal. As contemplated by the Practice Notes to Federal Circuit Rule 15, additional briefing time is appropriate to allow for effective coordination between counsel for both Appellants.

Furthermore, counsel for both Appellants are also involved in an action for unlawful disclosure of taxpayer information involving, among others, the parties in the present appeal. The action is pending in the District Court for the District of Arizona, styled Aloe Vera of America, Inc., et al. v. United States, CV-99-01794-PHX-JAT. This complex litigation was commenced in 1999 and has finally been set for trial to begin on July 22, 2014. Prior to trial, the parties have been ordered

to prepare and file a joint Proposed Pretrial Order, including proposed findings of fact and conclusions of law. The substantial amount of work in preparing the pretrial documents, as well as preparing for trial, will consume a majority of counsel's time and resources until at least early August.

As described in the accompanying Declaration of Philip C. Wilson and Declaration of Merwin D. Grant, in addition to the matter pending in the District of Arizona, both Appellants' firms are currently involved in numerous other matters requiring substantial amounts of work prior to the current deadline for filing Appellants' brief in the present appeal. These include an appeal before the Ninth Circuit, litigation in the U.S. Tax Court, and a class action case with pending deadlines and an appeal of the order certifying the class in which appellate briefing and motion practice are underway.

Counsel for Appellants submit that, given the complex subject matter of the present appeal, the pre-existing obligations of counsel in other pending matters, and the Government's agreement not to oppose the relief sought, good cause exists for the requested extension.

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Accordingly, Appellants respectfully submit that good cause exists for the filing of the present motion and, therefore, request that this Court grant Appellants' motion to extend the time to file their opening brief, extending the due date to August 29, 2014.

Respectfully submitted this 1st day of May, 2014.

/s/ Philip C. Wilson

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/s/ Merwin G. Grant, with permission

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Form 9

FORM 9. Certificate of Interest**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**Gene H. Yamagata, et al. v. United StatesNo. 14-5065**CERTIFICATE OF INTEREST**

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Rex G. and Ruth G. Maughan certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Rex G. Maughan

Ruth G. Maughan

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Woolston & Tarter, P.C.; Tim A. Tarter; Philip Charles Wilson; Kacie N. C. Dillon

April 16, 2014

Date

/s/ Tim A. Tarter

Signature of counsel

Tim A. Tarter

Printed name of counsel

Please Note: All questions must be answered

cc: Arthur T. Catterall

Form 9

FORM 9. Certificate of Interest

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Gene H. Yamagata, et al., v. United States

No. 14-5065

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Appellant, Gene H. Yamagata certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Gene H. Yamagata

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

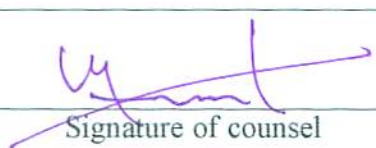
None

4. ☒ The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Merwin D. Grant, Esq. and Kenneth B. Vaughn, Esq. of Grant & Vaughn, P.C.

April 16, 2014

Date


Signature of counsel

Merwin D. Grant, Esq.

Printed name of counsel

Please Note: All questions must be answered

cc: Arthur T. Catterall, Esq. and Tim A. Tartr, Esq.

**UNITED STATES COURT OF APPEALS
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UNITED STATES,

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Judge Nancy B. Firestone

**DECLARATION OF PHILIP C. WILSON IN SUPPORT OF
UNOPPOSED MOTION OF PLAINTIFFS-APPELLANTS
TO EXTEND TIME TO FILE APPEAL BRIEF**

I, Philip C. Wilson, hereby declare as follows:

1. I am an attorney in the law firm of Woolston & Tarter, P.C., 2525 East Arizona Biltmore Circle, Suite B-218, Phoenix, Arizona 85016-2133.

2. I am admitted to practice in Arizona and Minnesota. I am also admitted to practice before the U.S. Court of Appeals for the Federal Circuit, the U.S. District Court for the District of Minnesota, the U.S. Court of Federal Claims, and the U.S. Tax Court.

3. I, together with attorneys Tim A. Tarter and Kacie N. Dillon of Woolston & Tarter, P.C., represent Plaintiffs-Appellants Rex G. and Ruth G. Maughan in the present appeal.

4. The present appeal was docketed on April 3, 2014. Plaintiffs-Appellants' opening brief is currently due on June 2, 2014.

5. I, and co-counsel from this Firm, are involved in an action for unlawful disclosure of taxpayer information involving, among others, the parties in the current appeal. The action is pending at the U.S. District Court for the District of Arizona; Aloe Vera of America, Inc., et al. v. United States, CV-99-01794-PHX-JAT. Trial has been scheduled to begin on July 22, 2014. In advance of trial, the parties have been ordered to prepare and lodge a Joint Proposed Final Pretrial Order by May 23, 2014, and also to file proposed findings of fact and conclusions of law by that same date. The preparation of these documents, as well as preparations for trial, will consume a majority of this Firm's time and resources through early August.

6. This Firm is also involved in numerous other matters with imminent deadlines. This firm represents Petitioners-Appellants in Minnick, et ux. v. Commissioner of Internal Revenue, No. 13-73234, currently pending before the Court of Appeals for the Ninth Circuit. Petitioners-Appellants' reply brief in Minnick is due to be filed by May 7, 2014. We are also counsel for Petitioners in

William D. Evans, et ux. v. Commissioner of Internal Revenue, No. 28012-11, currently pending before the United States Tax Court. Petitioners' reply brief in Evans is due to be filed by May 23, 2014.

7. This Firm also represents clients in a number of other matters that have required, and will require, a substantial portion of the Firm's time.

8. This appeal is a consolidated appeal. Consequently, and in accordance with the Practice Notes to Federal Circuit Rule 15, issuance of an adjusted briefing schedule is appropriate to allow effective collaboration among counsel for each Appellant.

9. Based on this Firm's current obligations in other pending matters, additional time is needed to research and study the issues involved in this appeal in order to best present them for consideration by the Court.

10. Government counsel Arthur Catterall has confirmed that the Government has no objection to the requested extension, and that the requested extension of time might relieve scheduling concerns on his part.

.....

.....

11. I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED this 1st day of May, 2014.

/s/ Philip C. Wilson

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**UNITED STATES COURT OF APPEALS
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UNITED STATES,

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Judge Nancy B. Firestone

**DECLARATION OF MERWIN D. GRANT IN SUPPORT OF
UNOPPOSED MOTION OF PLAINTIFFS-APPELLANTS
TO EXTEND TIME TO FILE APPEAL BRIEF**

I, Merwin D. Grant, hereby declare as follows:

1. I am an attorney in the law firm of Grant & Vaughn, P.C., 6225 North 24th Street, Suite 125, Phoenix, Arizona 85016.
2. I am admitted to practice in Arizona. I am also admitted to practice before the U.S. Court of Appeals for the Federal Circuit, the U.S. District Court for the District of Arizona, the U.S. Court of Federal Claims, and the U.S. Tax Court.

3. I, together with attorney Kenneth B. Vaughn of Grant & Vaughn, P.C., represent Plaintiff-Appellant, Gene H. Yamagata, in the present appeal.

4. The present appeal was docketed on April 3, 2014. Plaintiffs-Appellants' opening brief is currently due on June 2, 2014.

5. Mr. Vaughn and I are also involved in an action for unlawful disclosure of taxpayer information involving, among others, the parties in the current appeal. The action is pending at the U.S. District Court for the District of Arizona, styled Aloe Vera of America, Inc., et al. v. United States, CV-99-01794-PHX-JAT. Trial has been scheduled to begin on July 22, 2014. In advance of trial, the parties have been ordered to exchange draft pretrial statements by May 9, 2014, prepare and lodge a Joint Proposed Final Pretrial Order by May 23, 2014, and also to file proposed findings of fact and conclusions of law by that same date. The preparation of these documents, as well as preparations for trial, will consume a majority of this Firm's time and resources through early August.

6. This Firm is also involved in numerous other matters with imminent deadlines. This firm represents defendant/counterclaimant in First Credit Union v. Jobe, No. CV2011-093487, in which defendant's counterclaim has been certified as a class action and is currently pending before the Maricopa County Superior Court. A Joint Pretrial Memorandum is due to be filed by May 9, 2014. The counterdefendant has filed an appeal of the order certifying the class, and the

appellate briefing is in progress in the Arizona Court of Appeals, No. CA-CV 14-0065, with a reply memorandum on a motion to dismiss the appeal being due on May 5, 2014.

7. This Firm also represents clients in a number of other matters that have required, and will require, a substantial portion of the Firm's time.

8. This appeal is a consolidated appeal. Consequently, and in accordance with the Practice Notes to Federal Circuit Rule 15, issuance of an adjusted briefing schedule is appropriate to allow effective collaboration among counsel for each Appellant.

9. Based on this Firm's current obligations in other pending matters, additional time is needed to research and study the issues involved in this appeal in order to best present them in appellate briefs for consideration by the Court.

10. Government counsel, Arthur Catterall, has confirmed that the Government has no objection to the requested extension, and that the requested extension of time might relieve scheduling concerns on his part.

11. I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED this 1st day of May, 2014.

/s/ Merwin D. Grant
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FORM 30. Certificate of Service

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF SERVICE

I certify that I served a copy on counsel of record on
by:

May 1, 2014

- ☐ US mail
☐ Fax
☐ Hand
☒ Electronic Means
(by email or CM/ECF)

Philip Charles Wilson

Name of Counsel

/s/ Philip Charles Wilson

Signature of Counsel

Law Firm

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NOTE: For attorneys filing documents electronically, the name of the filer under whose log-in and password a document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. Graphic and other electronic signatures are discouraged.